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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,293	08/18/2003	Ted Marchildon	O120 0009	2002
7590	06/23/2006		EXAMINER	
David J. McGruder OYEN WIGGS GREEN & MUTALA #480 - 601 West Cordova Street Vancouver, BC V6B 1G1 CANADA			NGUYEN, SON T	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/642,293	MARCHILDON, TED	
	Examiner Son T. Nguyen	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 April 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 2-7 and 11-16 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,8-10,17 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SON T. NGUYEN
PRIMARY EXAMINER

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1,8,10,17** are rejected under 35 U.S.C. 102(b) as being anticipated by Leduc et al. (CA 2396317).

For claim 1, Leduc et al. teach a rotary hydroponic plant growing machine comprising a cylindrical shell 10,12 for holding plant containers, such that shoots of said plants grow in said containers in a direction radially inwardly of said shell (see fig. 2); a base 20,22; means 34 for rotating the cylindrical shell on the base; a light 120 inside the cylindrical structure; and means 100 for watering the plants in the containers as the shell rotates, the shell comprises a circumferential surface which defines a plurality of longitudinal slots 68 oriented generally parallel to an axis of the cylindrical shell and adapted to receive one or more containers, the slots configured to allow slidable movement of the containers in a direction generally parallel to the axis. Note the use of functional/intended use recitation such as “adapted to” and “configured to”, the slots of Leduc’s machine can or capable of slidably receiving a container. In addition, the moss 88 is considered to be a container because it contains the plant as shown in fig. 2.

For claim 8, Leduc et al. teach wherein edges of said circumferential surface adjacent to said longitudinal slot are adapted to slidably engage between a pair of

outwardly-extending flanges on said container and hold said container in said slot. Note, again, the use of functional/intended use recitation of "adapted to", which Leduc's slot is adapted to slidingly engage with a container having flanges if one employs such a container because the walls 66 surrounding the slot 68 are capable of engaging a flange of the container.

For claim 10, Leduc et al. teach one or more of the containers 88. Note, moss 88 is considered to be a container because it contains the plant as shown in fig. 2.

For claim 17, Leduc et al. teach wherein the slots 68 are sized to allow slidable movement of the containers 88 in the direction generally parallel to the axis along substantially the entire length of the shell.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leduc et al. as applied to claims 1,8 above, and further in view of Roberts (5097627).**

Leduc et al. are silent about each slots defines at least one opening sized to allow outwardly-extending flanges to be inserted into and removed from sliding engagement with the edges of the circumferential surface.

Roberts teaches a hydroponic system comprising a plant holding shell 8 having longitudinal slot (fig. 5, ref. 80) to receive plant containers 32, the slot is configured to

allow one to slide the container in a direction parallel to the entire length of the shell. In addition to the above, Robert teaches plant containers 32 having flanges 82 that slide into openings 79,82 of the plant holding shell 8 for sliding engagement of the containers 32.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ at least one opening and a plant container with flanges to fit therein the opening of the slot as taught by Roberts in the machine of Leduc et al. in order to, not only allow sliding engagement of the shell and containers, but also to secure the plant containers in position by connecting the flanges in the openings.

Response to Arguments

5. Applicant's arguments with respect to claims 1,8-10,17 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Son T. Nguyen
Primary Examiner
Art Unit 3643

stn